

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

In the Matter of:

MARISELA ORNELAS, d/b/a
VISION MOBILE HOME PARK, LLC,

Respondent.

No.: WQCC 20-_____

**ADMINISTRATIVE COMPLIANCE ORDER
REQUIRING COMPLIANCE AND ASSESSING A CIVIL PENALTY**

Pursuant to the New Mexico Water Quality Act ("Act"), NMSA 1978, Sections 74-6-1 to -17, and the New Mexico Water Quality Control Commission Regulations ("Regulations"), 20.6.2 NMAC, the Director of the Water Protection Division of the New Mexico Environment Department ("NMED") issues this Administrative Compliance Order ("Order") on behalf of NMED's Ground Water Quality Bureau ("Bureau") to Marisela Ornelas d/b/a Vision Mobile Home Park LLC ("Respondent"). The purpose of this Order is to assess civil penalties for the Respondent's violations of the Act and Regulations.

I. FINDINGS OF FACT

1. Pursuant to NMSA 1978, Section 9-7A-4, NMED is an executive agency within the New Mexico state government. Pursuant to NMSA 1978 Section 74-6-2(K)(1), NMED is a constituent agency of the New Mexico Water Quality Control Commission.

2. The Bureau is an organizational unit of NMED within its Water Protection Division. The Bureau was created pursuant to authority granted under NMSA 1978, Section 9-7A-6(B)(3).

3. Pursuant to NMSA 1978 Section 74-6-10(A)(1), when NMED determines that a

person violated or is violating a regulation or permit created pursuant to the Act, NMED may issue a compliance order assessing a civil penalty.

4. Pursuant to a delegation of authority from the Secretary of NMED, the Director of the Water Protection Division of NMED has authority to issue Administrative Compliance Orders on behalf of the Bureau. NMSA 1978, § 9-7A-6(B)(2).

5. Respondent owns and operates a company doing business by the name of Vision Mobile Home Park, LLC, which, although operating considerably longer, did not register with the New Mexico Secretary of State until September 6, 2018.

6. Respondent is a “person” as defined in Section 74-6-2(I) of the Act and 20.6.2.7(P)(2) NMAC.

7. Respondent discharges up to 8,700 gallons per day (“gpd”) of domestic wastewater to eleven septic tank/leachfield systems. The discharge contains water contaminants such as nitrate, chloride, total Kjeldahl nitrogen, and total dissolved solids that may exceed the standards of 20.6.2.3103 NMAC.

8. The discharge site is located at 1 Road 6367, Kirtland, San Juan County, New Mexico.

9. Respondent has a history of non-compliance with the Act and the Regulations and on October 31, 2011, NMED issued an Administrative Compliance Order against Respondent for multiple, unaddressed violations of the Act and the Regulations.

10. After discharging without a permit, Respondent submitted an application for a discharge permit to NMED for Vision Mobile Home Park LLC on January 6, 2012.

11. On March 8, 2012, Respondent entered into a settlement agreement with NMED that included civil fines that NMED reduced on the condition of adhering to the requirements of

the pending discharge permit. Pursuant to 20.1.3.22(B), NMED filed a stipulated final order and the settlement agreement with the Water Quality Control Commission on March 13, 2012.

12. NMED issued Discharge Permit Number 1691 ("DP-1691") to Respondent for Vision Mobile Home Park LLC on October 29, 2012.

13. DP-1691 required Respondent to install three monitoring wells, perform semi-annual groundwater sampling, perform annual wastewater sampling and submit all analytical results, as well as discharge volumes, in semi-annual monitoring reports to NMED.

14. Respondent never installed the three monitoring wells, never submitted the sampling/monitoring they would yield and did not submit any wastewater sampling results or discharge volumes in the required semi-annual reports.

15. On October 29, 2017, Respondent's discharge permit, DP-1691, expired. Despite NMED's two documented phone calls (June 11, 2019, and February 29, 2020) and three e-mail strings (September 28, 2018, through October 5, 2018; February 11, 2019, through March 4, 2019; and July 27, 2019, through August 5, 2019) with Respondent, including discussions with a consultant, Respondent did not submit an application for a renewal of DP-1691.

16. Respondent discharged without a permit from October 29, 2017, to April 8, 2020.

17. On January 22, 2019, NMED issued a Notice of Non-Compliance ("2019 NONC"), for egregious violations of the Water Quality Act, 20.6.2, NMAC, and the Stipulated Final Order and Settlement Agreement.

18. The 2019 NONC re-imposed the \$5,000 civil fine assessed in the 2012 settlement agreement because, contrary to DP-1691, (1) the Respondent never installed the three monitoring wells, and (2) the Respondent submitted some required monitoring reports that were incomplete

and failed to submit other required monitoring reports at all. The 2019 NONC required Respondent to apply for a discharge permit renewal for DP-1691, install three monitoring wells, perform semi-annual groundwater sampling, install a water meter on the facility's water supply, and inspect each septic tank for scum and solids. The NONC also offered Respondent an alternative route to compliance by connecting Vision Mobile Home Park LLC to the Valley Water and Sanitation District ("VWSD") sewer. If Respondent opted to connect to the VWSD sewer, the Notice of Non-Compliance required that Respondent contact the Bureau within fifteen (15) days of the postmark date on the Notice.

19. Respondent submitted an application for a discharge permit to NMED for Vision Mobile Home Park LLC on August 14, 2019. On April 8, 2020, NMED re-issued DP-1691 to Respondent for Vision Mobile Home Park LLC. Condition 10 of DP-1691 required that Respondent submit a plan to connect Vision Mobile Home Park to the VWSD sewer to NMED within 60 days following the effective date DP-1691, on or before June 7, 2020, or submit documentation illustrating why connection was infeasible. The discharge permit required the plan to include, at minimum, documentation on the funding sought/obtained for connection, a timeline for connection, construction benchmarks to be met, and a protocol for reporting progress toward connection, with a project completion date of no later than April 8, 2022.

20. As of July 23, 2020, Respondent had not fulfilled the requirements of Condition 10 of DP-1691, despite repeated attempts by NMED to contact Respondent to encourage awareness of the submission requirements of Condition 10, including providing a preliminary draft via email for review on December 19, 2019, mailing the final issued permit by certified mail #7017-3040-0000-4183-7144 on April 17, 2020 and by providing an electronic copy of the final issued permit via email on April 22, 2020. Both communications encouraged the

Respondent to carefully review the document and contact NMED with any questions.

21. On July 23, 2020, NMED issued a Notice of Violation to Respondent for violations of Condition 10 of the DP-1691, on the grounds that NMED had not received a plan from Respondent to connect to the VWSD sewer or documentation illustrating that connection to the VWSD sewer would be financially infeasible. The second Notice of Violation informed Respondent that to correct the violation of Condition 10, Respondent was required to submit either a plan for connection or documentation illustrating the financial infeasibility of sewer connection within 10 days following the date of the second Notice of Violation, on or before August 2, 2020.

22. As of the date of the issuance of this Administrative Compliance Order, Respondent has neither submitted to NMED a plan to connect to the VWSD sewer, nor documentation illustrating that connection to the VWSD sewer would be financially infeasible.

23. As of the date of the issuance of this Administrative Compliance Order, Respondent has not submitted any of the quarterly monitoring reports required as Condition 5 of DP-1691. In addition, to date, other than file an application to renew DP-1691, Respondent has not taken any of the actions required in the 2019 NONC.

II. VIOLATIONS

24. **Violation 1:** Pursuant to NMSA 1978 Section 74-6-10(A), NMED concludes that Respondent failed to complete the requirements of the March 13, 2012 settlement agreement and has violated Condition 10 of DP-1691 by failing to submit to NMED a plan to connect Vision Mobile Home Park to the VWSD sewer or provide to NMED documentation illustrating that connection to the VWSD sewer would be financially infeasible. NMED concludes that Respondent has repeatedly refused to comply with the Act and Regulations, evincing a degree of

willfulness and negligence. She has control over the events constituting the violation but has dismissed numerous directives and opportunities to come into compliance.

25. **Violation 2:** Pursuant to NMSA 1978 Section 74-6-10(A), NMED concludes that Respondent has violated Condition 5 of DP-1691 by failing to submit quarterly monitoring reports to NMED in accordance with the requirements of DP-1691.

26. Sections 74-6-10(C)(1) and 74-6-10.1(A)-(B) of the Act authorizes a civil penalty of up to \$15,000 per day for noncompliance with the provisions of Section 74-6-5 of the Act, including regulations and permits issued pursuant to that section.

27. Section 74-6-10(C)(2) of the Act authorizes a civil penalty of up to \$10,000 per day for each violation of a provision of the Act other than those based in Section 74-6-5.

28. NMED hereby assesses a civil penalty in the amount of \$265,050 for the violations set forth in Paragraph 24 and 25. The penalties are based upon the penalty calculation narrative attached to this Order. *See Attachment 1.*

29. Payment of the civil penalties is due no later than 30 calendar days after this Order becomes final. Payment shall be made by certified or cashier's check payable to the State of New Mexico and mailed (certified) or by pre-arranged hand delivery to the Bureau at the following address:

Michelle Hunter, Chief
Ground Water Quality Bureau
New Mexico Environment Department
1190 St. Francis Dr., Suite N-2250
Santa Fe, NM 87505
Telephone: 505-231-3773

Written notification of the payment shall also be provided to the following address:

Chris Vigil, Assistant General Counsel
New Mexico Environment Department

121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102
Telephone: (505) 383-2060
Email: christopherj.vigil@state.nm.us

III. COMPLIANCE ORDER

30. Based upon the foregoing findings and conclusions, Respondent is hereby ordered to:
31. Submit three proposed monitoring well locations pursuant to all specifications set forth in Condition 14 of the DP-1691 renewal discharge permit issued on April 8, 2020, to NMED no later than sixty (60) days after this order becomes final.
32. Install the three monitoring wells pursuant to all specifications set forth in Condition 15 of the DP-1691 renewal discharge permit issued on April 8, 2020, no later than one hundred and twenty (120) days after this order becomes final.
33. Survey the three monitoring wells pursuant to all specifications set forth in Condition 16 of the DP-1691 renewal discharge permit issued on April 8, 2020, no later than one hundred and fifty (150) days after this order becomes final
34. Perform quarterly groundwater sampling of the three monitoring wells pursuant to all specifications set forth in Condition 17 of the DP-1691 renewal discharge permit issued on April 8, 2020, immediately after installation and quarterly thereafter pursuant to the requirements of Condition 10.
35. Develop a groundwater elevation contour map on a quarterly basis pursuant to all specifications set forth in Condition 18 of the DP-1691 renewal discharge permit issued on April 8, 2020, immediately after installation and quarterly thereafter pursuant to the requirements of Condition 10.
36. Submit a plan for connecting to the VWSD sewer to NMED no later than thirty

(30) days after this order becomes final. The plan shall include, at minimum, documentation on the funding sought/obtained for connection, a timeline for connection, construction benchmarks to be met, and a protocol for reporting progress toward connection. The timeline in the plan shall have a project completion date of no later than April 8, 2022. If Respondent believes the plan is financially infeasible, Respondent shall provide evidence of hardship in the form of tax documents or other reliable records along with the plan submittal no later than thirty (30) days after this order becomes final.

37. All monitoring well proposals, completion reports, analytical results, surveys, groundwater contour maps, the connection plan or evidence of hardship shall be submitted to the following person and address:

Jason Herman
Ground Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, New Mexico 87502
(575) 649-3871

38. Failure to comply may subject Respondent to additional civil penalties. Section 74-6-10(F) of the Act authorizes the additional assessment \$25,000 for each day of continued noncompliance if Respondent fails to submit the plan or evidence of hardship as required by this Order.

IV. NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

39. Pursuant to Section 74-6-10(G) of the Act, Respondent has the right to answer this Order and to request a public hearing.

40. If Respondent: (a) contests any material or legal matter upon which the Order is based; (b) contends that the amount of the penalties proposed in the Order is inappropriate; (c) contends that Respondent is entitled to prevail as a matter of law; or (d) otherwise contests the

appropriateness of the Order, Respondent may mail or deliver a written Request for Hearing and Answer to the Order to the WQCC, at the following address:

Commission Administrator
Water Quality Control Commission
P.O. Box 5469
Santa Fe, NM 87502
Telephone: (505) 827-2425

41. Respondent must file the Request for Hearing and Answer to the Order within 30 days after Respondent's receipt of the Order.

42. Respondent must attach a copy of this Order to its Request for Hearing and Answer to the Order.

43. A copy of the Answer and Request for Hearing must also be served on counsel for NMED at the following address:

Chris Vigil
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Suite 1000
Albuquerque, New Mexico 87102
Email: christopherj.vigil@state.nm.us

44. Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Order of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent should so state, and Respondent may deny the allegation on that basis. Any allegation of the Order not specifically denied shall be deemed admitted. Respondent's Answer shall also include any affirmative defenses upon which Respondent intends to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived.

45. The Water Quality Control Commission's Adjudicatory Procedures, 20.1.3

NMAC, shall govern the hearing if Respondent requests a hearing.

V. FINALITY OF ORDER

46. This Order shall become final unless Respondent files a Request for Hearing and Answer to the Order with the WQCC within 30 days of receipt of this Order.

47. The failure to file an Answer constitutes an admission of all facts alleged in the Order and a waiver of the right to a hearing under Section 74-6-10(G) of the Act concerning this Order.

48. Unless Respondent requests a hearing and files an Answer, the penalty proposed in this Order shall become due and payable without further proceedings within 30 days after receipt of this Order.

VI. SETTLEMENT

49. Whether or not Respondent requests a hearing and files an Answer, Respondent may confer with NMED concerning settlement. NMED encourages settlement consistent with the provisions and objectives of the Act and Regulations. To explore the possibility of settlement in this matter, Respondent may contact the attorney assigned to this case at the following address:

Chris Vigil
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102
Phone: (505) 383-2060
Email: christopherj.vigil@state.nm.us

50. Settlement discussions do not extend the 30-day deadline for filing of Respondent's Request for Hearing and Answer to the Order, nor alter the deadlines for

compliance with this Order. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings.

51. Respondent may appear at the settlement conference alone or represented by legal counsel.

52. Any settlement reached by the parties shall be finalized by written settlement agreement and a stipulated final order. A settlement agreement and stipulated final order must resolve all issues raised in the Order, must be final and binding all parties to the Order, and may not be appealed.

VII. COMPLIANCE WITH OTHER LAWS AND WAIVER

53. Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations.

VIII. TERMINATION

54. This Order shall terminate when Respondent certifies that all requirements of this Order have been met, and NMED has approved such certification, or when the Secretary approves a stipulated final order.

Rebecca Roose

Digitally signed by Rebecca Roose
Date: 2021.01.08 09:20:47 -07'00'

Rebecca Roose, Director
Water Protection Division,
New Mexico Environment Department

Date

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2021, a true and accurate copy of the Administrative Compliance Order Requiring Compliance and Assessing a Civil Penalty was served by certified mail and email on Respondent at the following address:

Marisela Ornelas
P.O. Box 1178
Cortez, CO 81321
visionmhomepark@gmail.com
ehpestates@gmail.com

/s/ Chris Vigil
Assistant General Counsel
New Mexico Environment Department
121 Tijeras Avenue NE, Ste. 1000
Albuquerque, New Mexico 87102

In the Matter of:
MARISELA ORNELAS, d/b/a
VISION MOBILE HOME PARK, LLC

PENALTY CALCULATIONS

FIRST VIOLATION

20.6.2.3104 NMAC – Failure to Discharge in a Manner Consistent with the Terms and Conditions of the Discharge Permit

1. Gravity Based Penalty

a. Potential for Harm

The potential harm is major.

With respect to environmental harm, the WQCC Regulations, 20.6.2.3104 NMAC, requires that when a discharge permit is issued, the discharge must be consistent with the terms and conditions of the permit. The purpose of the discharge permit is to monitor and control the discharge of water contaminants and to ensure the discharge is managed in a manner that is protective of groundwater quality and human health. In this case, the Respondent discharged and continue to discharge approximately 6,000 gallons per day of domestic liquid waste into a poorly functioning sewerage system that has repeatedly failed, which is contrary to the terms and conditions of the discharge permit. With respect to groundwater, the discharge of domestic liquid waste and its effluent or leachate from sewerage systems typically contains pathogens, ammonia nitrogen and organic nitrogen. The latter two contaminants can be readily transformed into nitrate as they pass through the vadose zone prior to reaching the aquifer. The existing sewerage system at Vision Mobile Home Park poses a hazard to public health by allowing the discharge of domestic liquid waste and its effluent or leachate containing high concentrations of pathogens and nitrogen compounds to move directly or indirectly into groundwater through poorly functioning septic tank/leachfield system(s). . The Respondent has failed continually in past and present interactions with the Department to comply with the regulations and requirements of State law for the protection of groundwater. The Respondent's refusal to comply rises to the level of a violation. Because the discharge has the potential to transmit disease, to exceed the health-based standard for nitrate (20.6.2.3103.A NMAC), and the Respondent's ongoing refusal to rectify this violation represents a significant potential for harm.

With respect to regulatory harm, the refusal of the Respondent to comply even with the most basic requirements under the WQA and WQCC Regulations shows a willful disregard for state law. The Department has provided the Respondent multiple opportunities and potential pathways for compliance and has received no indication that the Respondent is engaged or willing to comply with the statutes and regulations of the State. Therefore, the Respondent's failure to comply with the fundamental and basic requirements of the WQCC Regulations and WQA poses a significant harm to the integrity of the groundwater protection program.

b. Extent of Deviation

The extent of deviation is major. The Department issued a renewal permit with terms and conditions that the Respondent has failed to comply with, then issued subsequent Notice of Violation letters to which the Respondent has not acknowledged or complied with.

c. Penalty Assessed

The discharge of water contaminants in a manner that does not comply with the permit conditions violates a regulation adopted pursuant to the WQA, §74-6-5, and is punishable by a civil penalty not to exceed \$15,000 per day. Using the appropriate gravity-based penalty matrix, this violation is assessed a civil penalty of \$15,000.

d. Multi-Day Penalty

The Respondent's ongoing violations of 20.6.2.3104 NMAC have not been remedied from a previous permit, an administrative order, and a settlement agreement entered on March 8, 2012 and represent an ongoing violation. The Department exercises enforcement discretion to assess a multi-day penalty. Department policy directs a mandatory multi-day penalty calculation for days 2-60 (59 days total) of a violation with Major potential for harm and Major extent of deviation. Department policy directs a discretionary calculation of multi-day penalties for day 61 and beyond. This violation penalty calculation includes a multi-day penalty for 59 days of violation at \$3,750 per day, the highest deviation allowed from the gravity-based penalty.

2. Adjustment Factors

The Department made no adjustments.

3. Economic Benefit

The economic benefit gained from noncompliance is the amount that the Respondent would have spent in order to comply with alternative conditions to install three monitoring wells and conduct hydrostatic testing of all eleven underground septic tanks at the facility. The Department calculated the economic benefit gained from noncompliance to be \$3,500 per well and \$300 per hydrostatic testing totaling \$13,800.

4. Total Penalty

Gravity Based Penalty	\$15,000
Multi-Day Penalty	\$221,250
Total Prior to Adjustments	\$236,250
Adjustment Factors	\$0
<u>Economic Benefit</u>	<u>\$13,800</u>
Total	\$250,050

SECOND VIOLATION

20.6.2.3107.A NMAC – Failure to Submit Monitoring Reports Required by the Discharge Permit

1. Gravity-Based Penalty

a. Potential for Harm

The potential for harm is major.

With respect to environmental harm, DP-1691 requires the permittee comply with monitoring and reporting requirements set by the Department. These requirements are intended to ensure that discharges are occurring in a manner that is protective of groundwater quality and that the human health standards are not exceeded. Because the Respondent has failed to submit any monitoring or reporting for the full term of their current permit, the potential for harm is significant.

With respect to regulatory harm, the requirements to submit basic monitoring and reporting for a facility is one of the fundamental obligations for a permittee under the WQA and WQCC Regulations. Without monitoring and reporting, the Department cannot monitor potential groundwater contamination that may occur from discharges at the facility. Therefore, the Respondent's failure to comply with these fundamental requirements poses a significant harm to the integrity of the groundwater protection program.

b. Extent of Deviation

The extent of deviation is major.

The Respondent made no attempts to provide the required monitoring and reporting required by the discharge permit.

c. Penalty Assessed

The failure to submit the monitoring and reporting required by the discharge permit violates a regulation adopted pursuant to the WQA, §74-6-5, and is punishable by a civil penalty not to exceed \$15,000 per day. Using the appropriate gravity-based penalty matrix, this violation is assessed a civil penalty of \$15,000.

d. Multi-Day Penalty

Although each missing monitoring report constitutes a separate violation of 20.6.2.3107.A NMAC that is ongoing until the monitoring report is submitted, the Department exercises enforcement discretion to not assess a multi-day penalty.

2. Adjustment Factors

The Department made no adjustments.

3. Economic Benefit

The Department did not calculate economic benefit.

4. Total Penalty

Gravity Based Penalty	\$15,000
Multi-Day Penalty	\$0
Total Prior to Adjustments	\$0
Adjustment Factors	\$0
<u>Economic Benefit</u>	<u>\$0</u>
Total	\$15,000

In addition to these penalties, the Respondent has not remedied the \$5,000 left from the last Administrative Compliance Order Penalty.